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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
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11 CHRISTOPHER PETER SAAVEDRA,

12 Plaintiff,

13 v.

14 NANCY A. BERRYHILL, Acting  
15 Commissioner of Social Security  
16 Administration,

17 Defendant.

Case No. EDCV 18-1402 JC

MEMORANDUM OPINION

18 **I. SUMMARY**

19 On July 2, 2018, plaintiff Christopher Peter Saavedra filed a Complaint  
20 seeking review of the Commissioner of Social Security's denial of plaintiff's  
21 application for benefits. The parties have consented to proceed before the  
22 undersigned United States Magistrate Judge.

23 This matter is before the Court on the parties' cross motions for summary  
24 judgment, respectively ("Plaintiff's Motion") and ("Defendant's Motion")  
25 (collectively "Motions"). The Court has taken the Motions under submission  
26 without oral argument. See Fed. R. Civ. P. 78; L.R. 7-15; July 6, 2018 Case  
27 Management Order ¶ 5.  
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1 Based on the record as a whole and the applicable law, the decision of the  
2 Commissioner is AFFIRMED. The findings of the Administrative Law Judge  
3 (“ALJ”) are supported by substantial evidence and are free from material error.

4 **II. BACKGROUND AND SUMMARY OF ADMINISTRATIVE**  
5 **DECISION**

6 On July 30, 2014, plaintiff filed an application for Supplemental Security  
7 Income alleging disability beginning on April 30, 2003, due to right leg pain due  
8 to gunshot. (Administrative Record (“AR”) 13, 178, 223). The ALJ examined the  
9 medical record and heard testimony from plaintiff (who was represented by  
10 counsel) and a vocational expert. (AR 30-78).

11 On June 29, 2017, the ALJ determined that plaintiff was not disabled  
12 through the date of the decision. (AR 13-25). Specifically, the ALJ found:  
13 (1) plaintiff suffered from the following severe impairments: right knee pain,  
14 status post history of a gunshot wound, open reduction internal fixation and  
15 hardware removal, right hand pain and numbness, an umbilical hernia, loss of  
16 vision in the right eye, and obesity (AR 15); (2) plaintiff’s impairments,  
17 considered individually or in combination, did not meet or medically equal a listed  
18 impairment (AR 17); (3) plaintiff retained the residual functional capacity to  
19 perform less than the full range of light work (20 C.F.R. § 416.967(b))<sup>1</sup> (AR 17);  
20 (4) plaintiff had no past relevant work (AR 23); (5) there are jobs that exist in  
21 significant numbers in the national economy that plaintiff could perform (AR 24);  
22 and (6) plaintiff’s statements regarding the intensity, persistence, and limiting  
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24 <sup>1</sup>More specifically, the ALJ determined that plaintiff (i) could lift and/or carry 20 pounds  
25 occasionally and 10 pounds frequently; (ii) could sit for six hours in an eight-hour workday;  
26 (iii) could stand and walk for two hours in an eight-hour workday, thirty minutes at a time;  
27 (iv) could not climb ramps, stairs, ladders, ropes, or scaffolds; (v) could occasionally balance,  
28 stoop, kneel, crouch, and crawl; (vi) could frequently handle and finger with bilateral hands;  
(vii) needed to avoid unprotected heights, and could not operate a motor vehicle; and (viii) could  
not perform work that required depth perception. (AR 17).

1 effects of subjective symptoms were not entirely consistent with the medical  
2 evidence and other evidence in the record (AR 18).

3 On June 1, 2018, the Appeals Council denied plaintiff's application for  
4 review. (AR 1).

### 5 **III. APPLICABLE LEGAL STANDARDS**

#### 6 **A. Administrative Evaluation of Disability Claims**

7 To qualify for disability benefits, a claimant must show that he is unable "to  
8 engage in any substantial gainful activity by reason of any medically determinable  
9 physical or mental impairment which can be expected to result in death or which  
10 has lasted or can be expected to last for a continuous period of not less than  
11 12 months." Molina v. Astrue, 674 F.3d 1104, 1110 (9th Cir. 2012) (quoting  
12 42 U.S.C. § 423(d)(1)(A)) (internal quotation marks omitted); 20 C.F.R.  
13 § 416.905. To be considered disabled, a claimant must have an impairment of  
14 such severity that he is incapable of performing work the claimant previously  
15 performed ("past relevant work") as well as any other "work which exists in the  
16 national economy." Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999) (citing  
17 42 U.S.C. § 423(d)).

18 To assess whether a claimant is disabled, an ALJ is required to use the five-  
19 step sequential evaluation process set forth in Social Security regulations. See  
20 Stout v. Commissioner, Social Security Administration, 454 F.3d 1050, 1052 (9th  
21 Cir. 2006) (citations omitted) (describing five-step sequential evaluation process)  
22 (citing 20 C.F.R. §§ 404.1520, 416.920). The claimant has the burden of proof at  
23 steps one through four – *i.e.*, determination of whether the claimant was engaging  
24 in substantial gainful activity (step 1), has a sufficiently severe impairment  
25 (step 2), has an impairment or combination of impairments that meets or medically  
26 equals one of the conditions listed in 20 C.F.R. Part 404, Subpart P, Appendix 1  
27 ("Listings") (step 3), and retains the residual functional capacity to perform past  
28 relevant work (step 4). Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005)

(citation omitted). The Commissioner has the burden of proof at step five – *i.e.*, establishing that the claimant could perform other work in the national economy. Id.

**B. Federal Court Review of Social Security Disability Decisions**

A federal court may set aside a denial of benefits only when the Commissioner’s “final decision” was “based on legal error or not supported by substantial evidence in the record.” 42 U.S.C. § 405(g); Trevizo v. Berryhill, 871 F.3d 664, 674 (9th Cir. 2017) (citation and quotation marks omitted). The standard of review in disability cases is “highly deferential.” Rounds v. Commissioner of Social Security Administration, 807 F.3d 996, 1002 (9th Cir. 2015) (citation and quotation marks omitted). Thus, an ALJ’s decision must be upheld if the evidence could reasonably support either affirming or reversing the decision. Trevizo, 871 F.3d at 674-75 (citations omitted). Even when an ALJ’s decision contains error, it must be affirmed if the error was harmless. Treichler v. Commissioner of Social Security Administration, 775 F.3d 1090, 1099 (9th Cir. 2014) (ALJ error harmless if (1) inconsequential to the ultimate nondisability determination; or (2) ALJ’s path may reasonably be discerned despite the error) (citation and quotation marks omitted).

Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” Trevizo, 871 F.3d at 674 (defining “substantial evidence” as “more than a mere scintilla, but less than a preponderance”) (citation and quotation marks omitted). When determining whether substantial evidence supports an ALJ’s finding, a court “must consider the entire record as a whole, weighing both the evidence that supports and the evidence that detracts from the Commissioner’s conclusion[.]” Garrison v. Colvin, 759 F.3d 995, 1009 (9th Cir. 2014) (citation and quotation marks omitted).

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1 **IV. DISCUSSION**

2 Plaintiff essentially contends that a reversal or remand is warranted because  
3 the ALJ failed to provide legally sufficient reasons for rejecting plaintiff's  
4 subjective complaints. (Plaintiff's Motion at 3-10). The Court disagrees.

5 **A. Pertinent Law**

6 When determining disability, an ALJ is required to consider a claimant's  
7 impairment-related pain and other subjective symptoms at each step of the  
8 sequential evaluation process. 20 C.F.R. § 416.929(a), (d). Accordingly, when a  
9 claimant presents "objective medical evidence of an underlying impairment which  
10 might reasonably produce the pain or other symptoms [the claimant] alleged," the  
11 ALJ is required to determine the extent to which the claimant's statements  
12 regarding the intensity, persistence, and limiting effects of his subjective  
13 symptoms ("subjective statements" or "subjective complaints") are consistent with  
14 the record evidence as a whole and, consequently, whether any of the individual's  
15 symptom-related functional limitations and restrictions are likely to reduce the  
16 claimant's capacity to perform work-related activities. 20 C.F.R. § 416.929(a),  
17 (c)(4); Social Security Ruling ("SSR") 16-3p, 2017 WL 5180304, at \*4-\*10.  
18 When an individual's subjective statements are inconsistent with other evidence in  
19 the record, an ALJ may give less weight to such statements and, in turn, find that  
20 the individual's symptoms are less likely to reduce the claimant's capacity to  
21 perform work-related activities. See SSR 16-3p, 2017 WL 5180304, at \*8. In  
22 such cases, when there is no affirmative finding of malingering, an ALJ may  
23 "reject" or give less weight to the individual's subjective statements "only by  
24 providing specific, clear, and convincing reasons for doing so." Brown-Hunter v.  
25 Colvin, 806 F.3d 487, 488-89 (9th Cir. 2015); see also Trevizo, 871 F.3d at 678-  
26 79 & n.5 (same) (citations omitted).

27 An ALJ's decision "must contain specific reasons" supported by substantial  
28 evidence in the record for giving less weight to a claimant's statements. SSR

1 16-3p, 2017 WL 5180304, at \*10; see also Treichler, 775 F.3d at 1103 (“ALJs  
2 typically identify what parts of the claimant’s testimony were not credible and  
3 why.”) (citation omitted). Nonetheless, if an ALJ’s evaluation of a claimant’s  
4 statements is supported by substantial evidence, “the court may not engage in  
5 second-guessing.” Chaudhry v. Astrue, 688 F.3d 661, 672 (9th Cir. 2012)  
6 (citation omitted).

## 7 **B. Analysis**

8 First, the ALJ properly gave less weight to plaintiff’s subjective statements  
9 based on plaintiff’s failure to seek a level or frequency of medical treatment that  
10 was consistent with the alleged severity of plaintiff’s subjective symptoms. See  
11 Molina, 674 F.3d at 1113 (ALJ may properly consider “unexplained or  
12 inadequately explained failure to seek treatment or to follow a prescribed course of  
13 treatment” when evaluating claimant’s subjective complaints) (citations and  
14 internal quotation marks omitted); SSR 16-3p, 2016 WL 1119029, at \*7-\*8 (ALJ  
15 may give less weight to subjective statements where “the frequency or extent of  
16 the treatment sought by an individual is not comparable with the degree of the  
17 individual’s subjective complaints, or if the individual fails to follow prescribed  
18 treatment that might improve symptoms. . . .”). For example, as the ALJ noted,  
19 contrary to plaintiff’s complaints of disabling knee pain, the evidence suggests  
20 that plaintiff did not follow through with physical therapy he had been prescribed  
21 on April 21, 2016, for treating his right knee after plaintiff’s hardware removal  
22 surgery. (AR 18-19, 20-21) (citing Exhibit 3F at 1-2 [AR 289-90]). Indeed, as the  
23 ALJ noted, the record does not appear to contain any evidence that plaintiff sought  
24 or was prescribed any further treatment for his knee impairment since then, and the  
25 record lacked evidence (and plaintiff has identified none) that plaintiff received  
26 any other medical treatment after May 2016 – a treatment gap of almost eleven  
27 months at the time of the hearing. (AR 19, 21); see, e.g., Chaudhry, 688 F.3d at  
28 672 (“[I]f a claimant complains about disabling pain but fails to seek treatment, or

1 fails to follow prescribed treatment, for the pain, an ALJ may use such failure as a  
2 basis for finding the complaint unjustified. . . .”) (citation omitted).

3 In addition, as the ALJ also noted, plaintiff “indicated he was simply taking  
4 over the counter pain medication and topical creams and was icing his joints for  
5 relief[,]” which “help[ed] a little bit.” (AR 19; see AR 48-50). The ALJ properly  
6 gave less weight to plaintiff’s subjective complaints to the extent the medical  
7 evidence reflects that plaintiff had been using “only conservative treatment.” Cf.,  
8 e.g., Tommasetti v. Astrue, 533 F.3d 1035, 1040 (9th Cir. 2008) (evidence that  
9 claimant “responded favorably to conservative treatment” inconsistent with reports  
10 of disabling pain); Parra v. Astrue, 481 F.3d 742, 751 (9th Cir. 2007) (“[E]vidence  
11 of ‘conservative treatment’ is sufficient to discount a claimant’s testimony  
12 regarding severity of an impairment.”) (citation omitted), cert. denied, 552 U.S.  
13 1141 (2008).

14 Second, the ALJ properly gave less weight to plaintiff’s subjective  
15 complaints to the extent plaintiff engaged in daily activities which require a  
16 greater level of functioning than plaintiff alleges he can actually do. (AR 19); see  
17 Burrell v. Colvin, 775 F.3d 1133, 1137 (9th Cir. 2014) (inconsistencies between  
18 claimant’s testimony and claimant’s reported activities valid reason for giving less  
19 weight to claimant’s subjective complaints) (citation omitted); SSR 16-3p, 2016  
20 WL 1119029, at \*7 (ALJ may determine that claimant’s symptoms “are less likely  
21 to reduce his or her capacities to perform work-related activities” where claimant’s  
22 subjective complaints are inconsistent with evidence of claimant’s daily activities)  
23 (citing 20 C.F.R. §§ 404.1529(c)(3), 416.929(c)(3)). For example, as the ALJ  
24 noted, plaintiff testified at the hearing that he was able to spend time on his patio  
25 and read books, magazines, and newspapers “all day.” (AR 19, 54-55). As the  
26 ALJ also noted, plaintiff testified that he could take care of a small dog, clean his  
27 room, make his bed, and go to church “every Sunday[.]” (AR 19, 55-56).

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1 As plaintiff correctly suggests (Plaintiff's Motion at 4-5, 8), a claimant  
2 "does not need to be 'utterly incapacitated' in order to be disabled." Vertigan v.  
3 Halter, 260 F.3d 1044, 1050 (9th Cir. 2001) (citation omitted). Nonetheless, this  
4 does not mean that an ALJ must find that a claimant's daily activities demonstrate  
5 an ability to engage in full-time work (*i.e.*, eight hours a day, five days a week) in  
6 order to discount conflicting subjective symptom testimony. To the contrary, even  
7 where a claimant's activities suggest some difficulty in functioning, an ALJ may  
8 give less weight to subjective complaints to the extent a claimant's apparent actual  
9 level of activity is inconsistent with the extent of functional limitation the claimant  
10 has alleged. See Reddick v. Chater, 157 F.3d 715, 722 (9th Cir. 1998) (ALJ may  
11 consider daily activities to extent plaintiff's "level of activity [is] inconsistent with  
12 [the] . . . claimed limitations"); cf. Molina, 674 F.3d at 1113 ("Even where  
13 [claimant's] activities suggest some difficulty functioning, they may be grounds  
14 for [giving less weight to] the claimant's testimony to the extent that they  
15 contradict claims of a totally debilitating impairment.") (citations omitted). Here,  
16 even though plaintiff stated that he had some difficulty functioning, substantial  
17 evidence supports the ALJ's conclusion that plaintiff's ability to engage in the  
18 daily activities noted above was inconsistent with plaintiff's alleged disabling  
19 symptoms. (AR 19); cf., e.g., Curry v. Sullivan, 925 F.2d 1127, 1130 (9th Cir.  
20 1990) (claimant's ability to "take care of her personal needs, prepare easy meals,  
21 do light housework and shop for some groceries . . . may be seen as inconsistent  
22 with the presence of a condition which would preclude all work activity") (citing  
23 Fair v. Bowen, 885 F.2d 597, 604 (9th Cir. 1989)). While plaintiff suggests that  
24 the level of his daily activities was not inconsistent with his subjective complaints  
25 (Plaintiff's Motion at 4), this Court will not second guess the ALJ's reasonable  
26 determination to the contrary, even if the evidence could give rise to inferences  
27 more favorable to plaintiff. See Chaudhry, 688 F.3d at 672 (citation omitted).

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1 Finally, the ALJ properly gave less weight to plaintiff's subjective  
2 complaints due, in part, to the absence of supporting objective medical evidence.  
3 See Burch, 400 F.3d at 681 ("Although lack of medical evidence cannot form the  
4 sole basis for discounting pain testimony, it is a factor that the ALJ can consider  
5 . . . ."). For example, as the ALJ's thorough discussion of the evidence reflects,  
6 despite plaintiff's complaints of disabling knee pain, physical examinations and  
7 objective findings related to plaintiff's knee were generally unremarkable,  
8 showing some minor abnormalities. (AR 19-20; see, e.g., AR 352-53 [x-ray of  
9 right knee showing "no acute disease"; tenderness to palpation and limited range  
10 of motion on exam, treated with steroid injection with follow up in two months];  
11 AR 402 [x-ray of right knee showing old injury but "no significant joint  
12 effusion"]; AR 359-60 [noting complaints of knee pain, but "ambulates well," "no  
13 new trauma," no swelling, and good range of motion on examination]; AR 365-66  
14 [plaintiff had right knee pain, limited flexion, and tenderness to palpation, but was  
15 still noted to be ambulatory with no erythema or joint effusion]). As the ALJ also  
16 noted, the evidence reflects that, although plaintiff had a brief period of increased  
17 symptoms and limitations following his December 23, 2015 hardware removal  
18 surgery, within about a month it was noted that the surgery had been completed  
19 "without complications," and that plaintiff was "now weight bearing" and "doing  
20 okay with his pain level[.]" (AR 20) (citing Exhibit 4F at 13-15, 18 [AR 440-42,  
21 445]). Similarly, regarding plaintiff's right hand impairment, the ALJ noted that  
22 treatment records showed some deformities and limits in plaintiff's hand, but  
23 otherwise routine healing from injury and generally normal findings. (AR 21)  
24 (citing Exhibits 3F at 14-15, 27, 28, 32-34, 79-80, 111 [AR 302-03, 315-16, 320-  
25 22, 367-68, 399]; 4F at 1-4, 31-32 [AR 428-31, 458-59]). Although plaintiff  
26 argues that the medical evidence actually supports his subjective complaints  
27 (Plaintiff's Motion at 6-8), again the Court may not second guess the ALJ's  
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1 reasonable determination to the contrary. Chaudhry, 688 F.3d at 672 (citation  
2 omitted).

3 Accordingly, plaintiff is not entitled to a reversal or remand on any asserted  
4 basis.

5 **V. CONCLUSION**

6 For the foregoing reasons, the decision of the Commissioner of Social  
7 Security is AFFIRMED.

8 LET JUDGMENT BE ENTERED ACCORDINGLY.

9 DATED: March 12, 2019.

10 /s/

11 Honorable Jacqueline Chooljian  
12 UNITED STATES MAGISTRATE JUDGE  
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